

GOVERNMENT

SIKKIM



GAZETTE

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**GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK**

No. 17/LD/18

Dated: 21.07.2018

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received assent of the Governor on 17th day of July, 2018 is hereby published for general information:-

**THE SIKKIM LOKAYUKTA (AMENDMENT) ACT, 2018
(ACT NO. 17 OF 2018)**

AN

ACT

further to amend the Sikkim Lokayukta Act, 2014.

BE it enacted by the Legislature of Sikkim in the Sixty-ninth Year of the Republic of India, as follows:-

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| Short title, extent and commencement | 1. (1) This Act may be called the Sikkim Lokayukta (Amendment) Act, 2018.
(2) It shall extend to the whole of Sikkim.
(3) (a) The amendments in Section 4 of the Sikkim Lokayukta Act, 2014 shall come into force at once.
(b) All other amendments in the said Act shall be deemed to have come into force on the 27 th day of February, 2014. |
| Amendment of section 2 | 2. In the Sikkim Lokayukta Act, 2014, (hereinafter referred to as the "said Act"), in section 2,-
(i) in clause (e), after the word "means" and before the words "an investigation", the words "an investigation by the Lokayukta and" shall be inserted;
(ii) after clause (q), a new clause (r) shall be inserted, namely;- |

- Amendment of section 4**
- (r) "Agency or investigating agency or special agency or authority means agency or investigating agency or special agency or authority within the State."
 - 3. In the said Act, in section 4,-
 - (i) in sub-section (1), the words "and Members" shall be omitted;
 - ii) after sub-section (1) a new sub-section shall be inserted, namely:-

"(1A)Members of the Lokayukta shall be appointed by the Governor by warrant under his hand and seal after obtaining recommendation of a Selection Committee consisting of, –

 - (a) the Chief Minister – Chairperson;
 - (b) the Chairperson of the Lokayukta, Sikkim – Member;
 - (c) the Speaker of the Legislative Assembly – Member;
 - (d) the Leader of Opposition in the Legislative Assembly. If there is no leader of the opposition, then the senior most Member of the Legislative Assembly by age – Member;
 - (e) an eminent person from the State as may be nominated by the Governor – Member".
 - 4. In the said Act, for the existing section 5, the following shall be substituted, namely;-
 - 5. (1) The Chairperson and every Member shall, hold office as such for a term of five years from the date on which he enters upon his office.
 - (2) The term of the Chairperson and Member may be extended for a further period not exceeding five years.
 - (3) The Chairperson or Member may,-
 - (a) by writing under his hand addressed to the Governor resign his office, or
 - (b) be removed from his office in the manner provided in section 30."
 - 5. In the said Act, after sub-section (2) of section 10, the following new sub-section shall be inserted, namely;-
 - (3) The Inspector of the Inquiry Wing may at the instance of the Lokayukta function as the Investigating Officer in relation to any Investigation by the Lokayukta itself and for the said purpose, he shall have the powers of a Police Officer-in-Charge of a Police Station under the Code of Criminal Procedure, 1973, other than arrest."
 - 6. In the said Act, in sub-section (2) of section 11, the following words shall be omitted, namely;- "as per sub-section (6) of section 14,"

**Amendment of
section 14**

7. In the said Act, in section 14,-
 - (i) for the existing sub-section (1) and the entries relating thereto, the following shall be substituted, namely:-
 - "(1) The Lokayukta, on receipt of a complaint, if it decides to proceed further, may undertake:-
 - (a) preliminary inquiry against any public servant by itself or its inquiry wing or order any agency to ascertain whether there exists a prima facie case for proceeding in the matter; or
 - (b) investigation by itself or order any agency or authority empowered under any law to investigate, where there exists a prima facie case:

Provided that any investigation under this clause shall be undertaken or ordered only if in the opinion of the Lokayukta there is substantial material relating to the existence of a prima facie case or any earlier statutory investigation or inquiry regarding the same complaint reveals that a prima facie case exists:

Provided further that before undertaking or ordering an investigation under this clause, the Lokayukta may call for the explanation of the public servant, so as to determine whether there exists a prima facie case for investigation.";
 - (ii) in sub-section (2), the words "and competent authority" wherever they occur, shall be omitted;
 - (iii) in sub-section (3),-
 - (a) the words "make recommendations to" shall be omitted;
 - (b) in clause (a), after the word "investigation", the words "by itself or" shall be inserted;
 - (iv) for the existing sub-section (4), the following shall be substituted, namely;-
 - "(4) During the pendency of proceedings before the Lokayukta, the promotion and other service benefits of a public servant mentioned in clauses (e) to (h) of sub-section (1) of section 13 shall be dealt with as per the provisions of law applicable to such cases.";
 - (v) in sub-section (6), for the words "it shall", the words "it may do so itself or" shall be substituted;
 - (vi) for the existing sub-section (8), the following shall be substituted, namely;-
 - "(8) The Lokayukta shall on the conclusion of the Investigation consider the entire material and finalise its report and based on its conclusions decide as to,-
 - (a) filing of charge-sheet or closure report before the Special Court against the public servant, or

(b) initiating departmental proceedings or any other appropriate action against the concerned public servant by the competent authority;

(vii) in sub-section (9), the words "in respect of cases investigated by any investigating agency (including any special agency)" shall be omitted.

Amendment of section 19 8. In the said Act, after sub-section (2) of section 19, the following new proviso shall be inserted, namely:-

"Provided that nothing contained in this section shall prevent the Lokayukta from conducting preliminary inquiry or investigation by itself and while doing so, may take the assistance of the Inquiry Wing of the Lokayukta or any other agency."

Amendment of section 21 9. In the said Act, in sub-section (1) of section 21, after the words "preliminary Inquiry", the words "the Lokayukta and" shall be inserted.

**K.C. Barphungpa (SSJS)
L.R-cum-Secretary
Law Department**